CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

N°: 500-17-040674-080

SUPERIOR COURT

MITEC TELECOM INC., a private corporation duly incorporated, having its head office at 9000 Trans-Canada Highway, Pointe-Claire, Québec, H9R 5Z8;

Plaintiff

v.

BIP CORPORATION, a company duly incorporated, having a place of business at 1650 Linda Vista Drive, San Marcos, California, 92069, USA;

Defendant

-and-

EXPORT DEVELOPMENT CANADA, a crown corporation, having a place of business at 151 O'Connor Street, Ottawa, Ontario, K1A 1K3;

Mise en cause

MOTION TO INSTITUTE PROCEEDINGS

IN SUPPORT OF ITS MOTION TO INSTITUTE PROCEEDINGS, PLAINTIFF, MITEC TELECOM INC., RESPECTFULLY SUBMITS THE FOLLOWING:

1. The Plaintiff, Mitec Telecom Inc. (hereinafter "**Mitec**"), is a company specialized in the manufacture and design of microwave and telecom products, as appears from a copy of the Enterprise Register file data, communicated herewith as **Exhibit P-1**;

2. The Defendant, BIP Corporation (hereinafter "**BIP**"), is an American corporation engaged in the business of manufacturing and distributing satellite communication systems;

EXHIBIT "E"

3. The Mise en cause, Export Development Canada (hereinafter "EDC"), is crown corporation wholly owned by the Government of Canada and it provides notably, insurance to Canadian exporters;

4. BIP generally purchases VSATs, block up converters, solid-state power amplifier systems and waveguide components and systems (hereinafter "**Inventory**"), from Mitec who in turn stores it in a segregated warehouse, prior to receiving instructions from BIP to deliver said Inventory;

5. On July 25, 2006, Mitec and BIP entered into a Bill and Hold Agreement (hereinafter the "**Agreement**") pursuant to which the Inventory purchased by BIP from Mitec is stored in a warehouse segregated from Mitec's Pointe-Claire facility, as appears from a copy of the Agreement, communicated herewith as **Exhibit P-2**;

6. From May 30, 2006 to July 27, 2007, BIP placed several purchase orders and instructed Mitec to deliver certain Inventory to its location in California, totalling an amount of US$488,050.52, as appears from a copy of the invoices and purchase orders communicated together as **Exhibit P-3**;

7. As of today, despite being duly put on notice, BIP neglects, omits and/or refuses to pay Mitec the amount of US$488,050.52, which continues to be due for the abovementioned merchandise sold, as appears from a copy of the demand letter dated November 15, 2007 which was served on December 4, 2007, as appears from the Declaration of service, communicated together herewith as **Exhibit P-4**;

8. As of the date of the present proceedings, the US dollar exchange rate is 1,0211 for one Canadian dollar, as appears from the document entitled *Rates and Statistics* dated January 15, 2008 provided by the Bank of Canada communicated herewith as **Exhibit P-5**;

9. In consequence of the foregoing Mitec is well founded to claim from BIP the amount of CA$498,348.39;

10. On May 1, 2004, Mitec purchased insurance from EDC which provides coverage for accounts receivable from foreign buyers (hereinafter the "**Policy**"), as appears from a copy of the Policy as well as the subsequent policy renewals communicated together herewith as **Exhibit P-6**;

11. Consequently, seeing BIP's refusal to honour its obligations towards Mitec and to pay the invoiced amount of US$488,050.52, the latter submitted to EDC a claim payment application for the same amount which represents its net loss, as appears from a copy of the claim payment application, communicated herewith as **Exhibit P-7**;

12. On December 11, 2007, alleging that the outstanding amount of US$488,050.52 is disputed, allegation which Mitec does not admit but expressly denies, EDC refused to assume liability for the claim, as appears from a letter dated December 11, 2007 addressed to Mitec, communicated herewith as **Exhibit P-8**;

13. Consequently, Mitec impleads its insurer, EDC, as a third party to these proceedings in order to ensure that EDC is fully informed of the litigation notably, of the outcome of the alleged dispute;

14. Furthermore, Mitec reserves all its rights and recourses against EDC pursuant to the Policy;

15. Pursuant to the Agreement, any legal proceeding must be instituted in the judicial district of Montreal:

> "**8.7 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Province of Québec and the federal laws of Canada therein applicable. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of the Province of Québec in the judicial district of Montreal with respect to any matter arising hereunder or related hereto."

16. The Plaintiff's claim is well founded both in fact and in law.

WHEREFORE, PLAINTIFF PRAYS THIS HONOURABLE COURT TO:

GRANT the present Motion;

DECLARE the validity of Mitec Telecom Inc.'s claim of CA$498,348.39 against BIP Corporation;

CONDEMN Defendant, BIP Corporation, to pay to Plaintiff, Mitec Telecom Inc., the amount of CA$498,348.39 plus interest and the additional indemnity provided by article 1619 of the *Civil Code of Quebec*, as of December 4, 2007, the date of service of the demand letter;

THE WHOLE with costs.

Montreal, January 15, 2008

(S) FRASER MILNER CASGRAIN,

TRUE COPY

Fraser Milner Casgrain S.E.N.C.R.L.

FRASER MILNER CASGRAIN LLP
Attorneys for Plaintiff
Mitec Telecom Inc.

#1442130.2

SCHEDULE 1
(Article 119 CCP)

NOTICE TO DEFENDANT:

TAKE NOTICE that Plaintiff has filed this action against you in the office of the Superior Court of the Judicial District of Montreal.

To respond to this action, you must first file an Appearance, in writing, personally or through an attorney, at the Montreal courthouse, situated at 1, Notre-Dame Street East, within **10 days** from the date of service of the present action.

BE ADVISED that if you fail to file an appearance within the time limit mentioned above, a judgment by default may be rendered against you at the expiration of the delay without further notice or extension.

If you file an appearance, the action will be presented before the Superior Court of the District of Montreal on **February 28, 2008, at 9:00 a.m.**, in room 2.16 of the courthouse unless a written agreement is made by the parties, before that date, to determine a timetable for the orderly progress of the proceeding. Such agreement must be filed at the office of the Court. On the date of presentation, the Court may then exercise such powers as are necessary to ensure the orderly progress of the proceeding.

In support of the action, Plaintiff discloses the following exhibits:

Exhibit P-1: Enterprise Register file data for Mitec Telecom Inc.;

Exhibit P-2: Agreement entered into on July 25, 2006 between Mitec Telecom Inc. and BIP Corporation;

Exhibit P-3: Invoices and purchase orders communicated together;

Exhibit P-4: Demand letter dated November 15, 2007 addressed to BIP Corporation, together with the Declaration of service;

Exhibit P-5: Document entitled *Rates and Statistics* provided by the Bank of Canada dated January 14, 2008;

Exhibit P-6: Policy insurance dated May 1, 2004 as well as the subsequent policy renewals;

Exhibit P-7: Claim payment application in the amount of US$488,050.52;

Exhibit P-8: Letter dated December 11, 2007 addressed to Mitec Telecom Inc.;

These exhibits are available on request.

If the amount claimed is inferior to $7,000, and if, as a Plaintiff, you could have been admissible as such in Small Claims Court, you may make a request to the clerk for the action to be disposed pursuant to the rules of Book VIII of the *Code of Civil Procedure* (R.S.Q. c. C-25)., and **BE ADVISED** that if you fail to make such a request, you could be liable for higher costs according to the rules applicable under the other Books of this *Code*.

DO GOVERN YOURSELF ACCORDINGLY.

Montréal, January 15, 2008

(S) FRASER MILNER CASGRAIN,

FRASER MILNER CASGRAIN LLP
Attorneys for Plaintiff
Mitec Telecom Inc.

TRUE COPY

Fraser Milner Casgrain s.e.n.c.r.l.

No. 500-17-040674-080

SUPERIOR COURT
DISTRICT OF MONTREAL

MITEC TELECOM INC.,

Plaintiff

v.

BIP CORPORATION,

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-and-

EXPORT DEVELOPMENT CANADA,

Mise en cause

Me Anca Neacsu File : 606778-127

MOTION TO INSTITUTE PROCEEDINGS AND NOTICE TO DEFENDANT
(Action on account – CA$498,348.39)

BIP CORPORATION
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FMC

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